

Statement of
The Honorable Orrin Hatch.

United States Senator
Utah
November 6, 2003

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Executive Business Meeting

On the Nomination of

Janice Rogers Brown to be Circuit Judge

for the United States Court of Appeals for the District of Columbia Circuit

Today on the agenda is the nomination Janice Rogers Brown to be a Judge on the United States Court of Appeals for the District of Columbia Circuit.

Let me say just three words here at the outset to those who have bought into the propaganda that Justice Brown is a foe of civil rights, women, consumers, and everyday persons:

You are wrong.

And anyone who knows her life story and who fairly evaluates her record as a judge should know better.

Justice Brown grew up the daughter of sharecroppers in segregated, rural Alabama. As a single mother, she put herself through college at Cal State Sacramento before enrolling in law school at UCLA. She has spent nearly a quarter-century in public service, including nearly a decade as a judge. In 1996, she became the first African American woman to sit on the California Supreme

Court. Justice Brown experienced first hand the scourge of Jim Crow laws. She attended segregated public schools. And she nevertheless broke racial and gender barriers - a feat of which we should all be proud. In light of her personal experiences - something that I dare say none of us on this Committee have experienced -- it is beyond me how anyone can seriously argue that she is insensitive to racial and gender issues, or to the rights of the disadvantaged.

Justice Brown is a success story because she is smart, she is tough, and she is principled, and above all, she is fair. Her record on the bench reflects a jurisprudence guided by the rule of law, NOT by a desire to achieve a particular outcome for or against any particular group. While some may not always like the outcomes which follow from that approach, THAT IS HER ROLE AS A JUDGE. She calls them as she sees them. That is all we can and should ask of any judge.

Last year, most of the opinions of the California Supreme Court were unanimous, and Justice Brown wrote more majority opinions than any other justice. She was retained in her last election with a whopping 76% of the vote. She has been described as one of the leaders on the court. This is why, in a letter dated October 16, 2003, a dozen of her former judicial colleagues, both Democrats and Republicans, wrote: "We know that she is a jurist who applies the law without favor, without bias, and with an even hand."

There have been some who have excoriated Justice Brown for isolated cases among the more than 700 she has decided in her judicial career. These critics, presumably want judges who decide cases based on the identity of the parties or reach desired results instead of the result the law compels.

For example, at her hearing we heard the repeated mantra that Justice Brown is too critical of big government. But a close examination of her record indicates that any criticism she may have expressed towards big government does not interfere with her judicial decision making.

- In *Lungren v. Superior Court*, Justice Brown joined in an opinion upholding the Safe Drinking Water and Toxic Enforcement Act of 1986, and expansively interpreted the phrase "source of drinking water" to include faucets allegedly containing lead so that the plaintiffs could proceed with their case.

- In *Bockrath v. Aldrich Chemical Company* she upheld the right of a plaintiff to sue for exposure to toxic chemicals using the government's environmental regulations.

- In *Lochyer v. Shamrock Foods* she upheld California's very stringent standards for identifying and labeling milk and milk products, thereby ensuring that the government has a role in protecting the safety of our children and ALL Californians.

- In *Ramirez v. Yosemite Water Company*, she joined in an opinion validating state regulations regarding overtime pay.

- And in *Pearl v. Worker's Compensation Appeals Board* she upheld the role of the worker's compensation appeals board in applying a stringent standard of "industrial causation" for a worker's injury, thereby showing that the state has a proper role in ensuring the safety of workers. This is NOT the record of a jurist who is on a mission to dismantle government.

Another charge leveled against Justice Brown is that she is against everyday working people. But she has authored NUMEROUS opinions protecting the rights of ordinary workers.

- In *Hamilton v. Asbestos Corp.*, Justice Brown ruled that the statute of limitations runs from the date the plaintiff discovered that his disability was caused by asbestos injury, not from the date of the injury.

- In *McKown v. Wal-Mart Stores*, she held that the hirer of an independent contractor is liable for injury to the independent contractor=s employee caused by the hirer=s negligent provision of unsafe equipment.

- In *Avalon Bay v. Workers Comp. Appeals Bd.*, she agreed that the 60-day time period for payment of medical benefits applies to the cost of transportation to obtain medical treatment.

- In *County of Riverside v. Superior Court*, she held that a peace officer is statutorily entitled to view adverse comments in his personnel file and file a written response to a background investigation of the officer during probationary employment.

- And in *State Comp. Ins. Fund v. Superior Court*, she allowed a claim by insured employers against a workers= compensation insurer for misallocating the plaintiffs= claims expenses and reporting that misinformation to a ratemaking organization, resulting in higher premiums for plaintiffs.

Do these decisions indicate that Justice Brown is reflexively pro-government, pro-worker, and anti-business? Of course not. They indicate that she decides cases individually based on the facts and the law. This is precisely the type of judge we should want on the federal bench. I am confident that Janice Rogers Brown will make an exemplary addition to the D.C. Circuit, and I urge my colleagues to join me in supporting her nomination.